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Director's Decisions for California

Color of Title

1958-1970

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In reply refer to:

Sacramento 053194
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 2, 1958

Certified Mail
Return Receipt Requested

DECISION

Glen E. Adkisson : Pre-emption Claim
:
:

Manager's Decision Affirmed

Glen E. Adkisson has appealed to the Director, Bureau of Land Management from a decision of the Manager, Land Office, Sacramento, California, dated February 4, 1957, rejecting his pre-emption claim.

Mr. Adkisson had filed on December 17, 1956, in the Sacramento Land Office a "Notice of Pre-emption Claim, Caveat," executed October 30, 1954, which notice set forth that the appellant had pre-empted certain land in California.

The Manager stated in his decision that the Act of March 3, 1891 (26 Stat. 1095) repealed the laws allowing pre-emptions of the public lands, but provided for the perfecting of all bona fide claims theretofore lawfully initiated. Since the pre-emption claim of Mr. Adkisson was not initiated prior to the passage of the Act of March 3, 1891, his "Notice of Pre-emption, Caveat" was rejected as to all lands described therein.

The fourth section of the Act of March 3, 1891 repeals all the laws allowing pre-emption of the public lands, but provides for perfecting claims previously initiated. See 12 L.D. 405 (1891). Any person asserting a lawfully initiated claim under the saving clause of the act has the burden of showing settlement prior to March 3, 1891. See Silva v. Gonzales, 23 L.D. 189 (1896).

The appellant has offered no showing of any claim antedating the repeal of the pre-emption laws. Accordingly, the decision of the Manager is affirmed.

Glen E. Adkisson is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after the receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Hon. Charles M. Teague, House of Representatives
Mr. Harlan M. Thompson, Attorney at Law (Certified Mail)
Mr. Glen E. Adkisson, (Regular Mail)
Lands Staff Officer
Appeals List No. 1
EVJ

35615

Appeal to Sec.
affirmed A-27906 5-4-59

In reply refer to:
Los Angeles 0147828
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 26, 1958

Certified Mail
Return Receipt Requested

DECISION

Lewis J. H. Bockholt and Jeanette B. Fischer : Color of Title

Manager's Decision Affirmed

The above-named parties have appealed from a decision of the Manager rejecting their color-of-title application for the stated reason that the application does not show that there are any improvements on or cultivation of the land, as required for class 1 color-of-title claims. The decision also recited that the application was not cognizable as a class 2 claim. The appellants assert that their first predecessors in interest were named as grantees in a deed dated May 25, 1925 executed by the County Tax Collector, and indicate that they obtained purported title through mesne conveyances. The appellants request equitable relief in view of the many years during which they and their predecessors in interest paid taxes on the land under the impression that they owned the tract.

43 CFR 140.3 provides inter alia that a claim of class 1 (of the two classes referred to in the Act of December 22, 1928 as amended) is one which has been held in good faith and in peaceful possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim or class 2 must be held under claim or color of title for the period commencing not later than January 1, 1901 to the date of the application and the claimant and his predecessors in interest must show that they paid the levied taxes from the date of the commencement of the claim to the date of application. The appellants have not alleged any cultivation of the land in issue nor have they claimed that valuable improvements have been placed on the land. Even if valuable improvements had been placed on the land by the appellants or their predecessors in interest, such improvements must be in existence at the time the application is filed in order to meet the condition of the statute. Kurt J. Reif, et al., A-27625 (March 10, 1958).

It follows that the appellants have not satisfied the requirements of either class 1 or class 2 color-of-title claims.

Moreover, the records show that the land in issue was withdrawn under a first form reclamation withdrawal on October 22, 1920 and was restored therefrom by order of October 14, 1954. The color-of-title claim was initiated in 1925. In Ralph Findlay, A-23522 (February 23, 1943) it was held that a claim initiated while land is withdrawn can be the basis of no right as against the United States as the owner of the title; even where the land is restored from a withdrawal, the applicant, since he is a trespasser, can base no rights upon an occupation maintained in trespass. D. D. Wood, BLM 044799 (Ala.) (June 25, 1958).

Accordingly, the decision of the Manager is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by the appellants, then the adverse parties to be served are:

Mrs. Harriet Reeder Allen, 3750 El Canto, Spring Valley, California

Mr. John W. Reeder, Jr., 1860 Braemer Road, Pasadena, California

Mr. Clifton O. Myll, 82-217 San Jacinto, Indio, California.

For the Director:

A. H. Shurr

Enclosure

DISTRIBUTION:

Hon. William E. Hess (Regular Mail)
Mr. Lewis J. H. Bockholt (Certified Mail)
Mrs. Jeanette B. Fischer (Certified Mail)
Mrs. Harriet Reeder Allen (Regular Mail)
Mr. John W. Reeder, Jr. (Regular Mail)
Mr. Clifton O. Myll (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

42059

In reply refer to:
Sacramento 051170
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 29, 1958

DECISION

Hazel E. Rood : Color of Title

Case Remanded

Hazel E. Rood has appealed from a decision of the Manager, dated May 31, 1957, rejecting her color of title application embracing lands described by metes and bounds for the stated reason that the land applied for was patented to one William F. Coe on November 15, 1873.

The decision of the Manager is based on the record of the survey of lot 40, sec. 12, T. 11 N., R. 10 E., M.D.M., California, on the basis of which it was determined that the area applied for is within the boundaries of patented lot 40. However, the appellant offers evidence from a private survey made in May, 1938, which shows the area claimed by the appellant to be situated north of the northern boundary of patented lot 40 as that lot is actually laid out on the ground; this local plat indicates that the land applied for is within unpatented lot 5, sec. 12 of the township.

The location of the land applied for with relation to the patented lot is a question of fact. The record contains no data on which a final determination can be made. Accordingly, the case is remanded to the Manager, through the Bureau's State Supervisor at Sacramento, California, for a field investigation to determine the location of the land sought and whether the land claimed is contained within the boundaries of lot 40 or on vacant public domain, and for further appropriate consideration.

For the Director:

A. H. Shaw

DISTRIBUTION:
Hughes, Maul & Fogerty, Attorneys at Law (Regular Mail)
Hazel E. Rood (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

42059

COLOR OF TITLE * 1 Generally

Where a color of title applicant under a claim of class 2 fails to submit evidence showing that taxes levied on the land from January 1, 1901 to the date of application have been paid, the application is properly rejected.

David Leon Williams, Sacramento 055830 (February 20, 1959)

DEPT. OF INTERIOR
SACRAMENTO, CAL.
MAR 9 10 00 AM 1959
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
Sacramento 055830
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 20, 1959

Certified Mail
Return Receipt Requested

DECISION

David Leon Williams : Color of Title

Decision of Manager Affirmed

David Leon Williams has appealed from the Manager's decision, dated November 5, 1958, rejecting his color of title application under a claim of class 2, * for the stated reason that the applicant has only shown evidence that taxes have been paid since the year of 1942.

Upon appeal, the appellant submitted evidence that taxes were paid on the land from June 28, 1900 to the year of 1920 inclusive. But since the information was not submitted on Form 4-1252, it did not contain information as to the amount of the tax levy for each year and the amount of the tax paid. Moreover, the appellant has not furnished the required information for the intervening years between 1921 and 1941 inclusive, except for a supplemental form supplying some information for the years of 1934 to 1940 inclusive.

A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by the State and local governmental units. 43 CFR, 1954 ed., 140.3. The appellant must file evidence on Form 4-1252, certified by the proper county official or an abstractor, showing that all taxes levied on the land between January 1, 1901 and the time his application was filed were paid. 43 CFR, 1954 ed., 140.7(b). This should be done by showing the amount of the tax levied each year and the amount of the tax payment. Where a color of title applicant fails to submit the requested data necessary for the informed adjudication of his color of title claim, his application is properly rejected. Harry Berry, BLM 044565 (September 26, 1958).

---

* The record shows no valuable improvements placed on the land or that some part of the land has been reduced to cultivation, so for at least that reason the application does not satisfy the requirements for a claim of class 1. Kurt J. Reif, A-27625 (March 10, 1958).

Accordingly, the decision of the Manager is affirmed, without prejudice to the right of the appellant to submit the necessary data to the Bureau's Land Office at Sacramento, California, within 30 days from service of this decision.

Mr. Williams is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal, there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Matthew E. Marsh, Attorney at Law (Certified Mail)
Stromsness & Hultgren, Attorneys at Law (Regular Mail)
Mr. David Leon Williams (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

49261

COLOR OF TITLE * 1 Generally

Patented lands cannot be claimed under the Color of Title Act.

G. K. Simmons, Los Angeles 0154048 November 27, 1959

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 015404
5.04g

November 27, 1959

Certified Mail
Return Receipt Requested

DECISION

G. K. Simmons : Color of Title

Decision Affirmed

G. K. Simmons, through his attorneys, has appealed to the Director, from the decision of the Chief, Lands Adjudication Unit, Los Angeles, California, dated March 10, 1959, which rejected the appellant's color-of-title claim under the act of December 22, 1928, as amended (45 Stat. 1069; 43 U.S.C. Sec. 1068).

The records show that the lands involved, the north one-half of Section 19, T. 12 S., R. 16 E., S.B.M., were conveyed to the Southern Pacific Railroad Company, under the act of March 3, 1871 (16 Stat. 573), in 1905. The original plat of survey, approved December 20, 1856, shows that the tract contains 322.59 acres. The tract was subsequently resurveyed and by a plat approved on September 15, 1939, the north one-half of Sec. 19 was shown to contain 472.68 acres.

The appellant states that on December 13, 1949, he purchased the said north one-half, Section 19 from the Southern Pacific Land Company, except a parcel of land containing 0.67 acres which was conveyed to the United States by deed on March 1, 1940.

The appellant filed the color-of-title claim for 149.69 acres on December 16, 1957.

The appellant alleges that the acreage within the exterior boundaries of the resurvey (472.68) which exceeds the acreage described in the original survey (322.59) is public domain land which should be granted to him under the color-of-title act. The appellant also alleges that when he purchased the land from the Southern Pacific Land Company he purchased the entire tract described as the N½ of Sec. 19, according to the approved resurvey plat.

The Supreme Court, in Cragin vs. Powell, 128 U.S. 691, held that the power to make and correct surveys of the public lands is within the

exclusive jurisdiction of the General Land Office, now the Bureau of Land Management. That court also held, that the courts may protect private rights acquired against interference by subsequent surveys, United States vs. State Investment Company et al., 264 U.S. 206. Accordingly, the whole north one-half of the said section having been patented to the Southern Pacific Railroad Company, the fact that the land was later resurveyed to show a greater area would not change the description of the land patented, and, since no private rights were prejudiced by the resurvey, the boundaries thereof are conclusive and not subject to challenge. Thus, the north one-half of the said section contains patented lands only and such lands cannot be claimed under the color-of-title act.

As to the appellant's second allegation, if the chain of title from the patentee, the Southern Pacific Railroad Company, to the appellant shows that the entire one-half section (except 0.67 acre) was conveyed, then, pursuant to the Supreme Court decisions, supra, and the plats of survey, the appellant's title to the north one-half of Section 19, Township twelve South, Range sixteen East, San Bernardino Meridian, cannot properly be disputed. The appellant may wish to record a copy of this decision, a copy of the plat of resurvey and such other documents as may appear relevant, to show the title to said lands to be out of the United States as herein set forth.

In view of the foregoing, the decision appealed from is affirmed.

G. K. Simmons is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Acting Director

Enclosure

DISTRIBUTION:

Hanley and Lawrence, Attorneys for appellant (Certified Mail)
Mr. G. K. Simmons (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MHS

DOCKET FILES

COLOR OF TITLE * 1 Generally

PUBLIC LANDS * 10 Appraisal

Where land is appraised pursuant to a color of title application, and it appears upon review that the appraisal of the value of the subsurface resources of the land may have been too high, and that the appraisal of the value of the surface of the land may not have been conducted in accordance with standard Bureau procedures, the case will be remanded for a complete reappraisal of the land.

Mordelo L. Vincent, Jr., BLM 047676 (May 9, 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
BLM 047676 (La.)
5.04g

May 9, 1960

Certified Mail
Return Receipt Requested

DECISION

Mordelo L. Vincent, Jr. : Color of Title

Case Remanded

Mordelo L. Vincent, Jr., has appealed from a decision of the Chief, Land Adjudication Section, Eastern States Land Office, dated April 20, 1959, approving his application to purchase a certain tract of land under the Color of Title Act, but setting the price at which it was to be sold at $12,768.

The land applied for by Mr. Vincent consists of 167.44 acres. The sale price of $12,768 represents an evaluation of the surface of the land at $210 and an evaluation of the oil and gas resources of the land at $12,558. The appellant contends that this price is excessive. He states that the value of this land for oil or gas is purely conjectural; that the land is not on the known geological structure of a producing oil or gas field; and that numerous dry wells have been drilled in the immediate vicinity of the land applied for. The appellant submitted a map showing the location of these dry wells.

In the light of the information submitted by the appellant, it would appear appropriate to reconsider the bases for the appraisal of the oil and gas values of this land. Also, it appears that the appraisal of the surface of the land may not have been conducted in accordance with standard Bureau procedures. Therefore, a complete reappraisal of the land should be made.

In his decision, the Chief of the Lands Adjudication Section held that Mr. Vincent was qualified to purchase this land under the Color of Title Act on the basis of his having shown possession of the land, and payment of taxes levied on the land by State and local governmental units, prior to January 1, 1901. However, the chain of title submitted by Mr. Vincent to show ownership of this land by him, and his predecessors in interest, since prior to January 1, 1901, indicates that on March 14, 1940, he conveyed a part, or all, of his interest in the land to one Winifred Burns Vincent. There is no indication of any subsequent conveyances by Winifred Burns Vincent.

In addition, Mordelo L. Vincent, Jr., made application in his own behalf and as agent for Kenneth B. Smith and Loralee Vincent Smith Adams, thereafter submitting a power of attorney whereby Kenneth B. Smith and Loralee Vincent Smith Adams appointed him as their attorney in fact. However, the list of conveyances reflects that Lyda A. Starr had some interest in the land as late as 1957. Lyda A. Starr is not named in the record as an applicant or an adverse party. Also, Mordelo L. Vincent, Jr., has submitted no proof that he is empowered to represent her. It is thus not clear whether, or to what extent, the applicant now has an interest in this land. Therefore, before proceeding to reappraise the land, the Manager of the Eastern States Land Office shall call upon the applicant to submit additional information as to his present status with respect to the land.

The decision of the Chief, Lands Adjudication Section, is vacated and the case remanded for further action consistent with this decision.

Edward Woozley
Director

DISTRIBUTION:

Hon. T. Ashton Thompson, House of Representatives
Mrs. Georgette B. Lee, Attorney at Law (Regular Mail)
Mr. Mordelo L. Vincent, Jr. (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MG

appeal to Sec 9-17-62
affirmed A-28630

DOCKET FILE

COLOR OF TITLE * 1 Generally

Occupation and improvement of land under a mistaken belief that the boundary of adjoining private land encompasses the public land is not sufficient to establish a color of title claim to the public land.

Lester J. Hamel, Sacramento 059107 (February 6, 1961)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Sacramento 059107
5.04g

February 6, 1961

Certified Mail
Return Receipt Requested

DECISION

Lester J. Hamel : Color of Title

Decision of Manager Affirmed

Mr. Lester J. Hamel has appealed from the Manager's decision, dated March 7, 1960, rejecting his color of title application for the reason that the appellant has failed to establish that his claim was initiated by a deed or other written instrument purporting to convey title to the lot he seeks to purchase.

The instruments of conveyance submitted by the appellant purport to convey title to land in the SE¼ of sec. 15, while the lot sought by Mr. Hamel is situated in the NE¼ of that section. On appeal the appellant concedes that he has not submitted a written instrument which by its terms purports to convey title to the lot, but he asserts that he and his predecessors-in-interest have occupied and claimed the lot for longer than prescribed by the Act under the mistaken belief that it was part of their adjoining patented land.

The Department has consistently held that the occupation and improvement of land under a mistaken belief that the boundary of adjoining private land encompasses the public land is not sufficient, since the Color of Title Act (43 U.S.C., 1958 ed., 1068 et seq.) does not cover the situation where the claimant's mistake was merely one of fact respecting the boundaries of his land. See Christopher A. Merlau, A-26204 (December 18, 1951); Ephraim R. Nelson, A-25865 (June 6, 1950). The purpose of the Color of Title Act, supra, is to provide a legal method whereby a valid title to a tract of public land may be acquired by one who, relying in good faith upon a title or claim of title derived from some source other than the Government, has been in peaceful, adverse possession of the tract for the prescribed period and has met the other requirements of the act. John Johnson, A-25695 (December 30, 1949).

The evidence submitted does not show that the appellant and his predecessors in interest were justified in believing they held title to the lot in issue, so Mr. Hamel has not met the criteria to purchase the land pursuant to the Color of Title Act, supra, and his application must be rejected.

Accordingly, the decision of the Manager is affirmed.

Mr. Hamel is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee will be $5.00. In taking an appeal, there must be strict compliance with the regulations.

If an appeal is taken by Mr. Hamel, then the adverse parties to be served are:

Mr. Richard P. DeSmet 1/
1631 Twelfth Avenue
Sacramento 18, California

Mr. Robert G. Lynn 2/
4088 Las Pasas Way
Sacramento 25, California

Mohawk Petroleum Corporation and M. J.M.&M. Oil Company 3/
c/o Mr. Robert G. Lynn
4088 Las Pasas Way
Sacramento 25, California

For the Director:

Enclosure

1/ Mr. DeSmet has filed public sale application Sacramento 057813 to have all of the lot in issue offered for sale, and small tract application Sacramento 058176 for the $E\frac{1}{2}$ of the lot.

2/ Mr. Lynn has filed small tract application Sacramento 058175 for the $W\frac{1}{2}$ of the lot.

3/ The lot is embraced in outstanding oil and gas lease Sacramento 056821 issued to these companies. The pertinent part of the Color of Title Act (43 U.S.C., 1958 ed., 1068b) provides that where the claim was initiated not later ~~then~~ January 1, 1901, no mineral reservation to the United States shall be made unless at the time of issuance of the patent the land is subject to an outstanding mineral lease. Therefore, in the event the appellant obtains additional evidence to show a valid claim of color of title to the lot, a patent issuing during the life of this lease must contain an oil and gas reservation to the United States. See Solicitor's Opinion, M-36385 (November 26, 1956).

DISTRIBUTION:

Gilmore & Gilmore, Attorneys for Appellant (Certified Mail)
Mr. Lester J. Hamel (Regular Mail)
Mr. Richard P. DeSmet (Regular Mail)
Mr. Robert G. Lynn (Regular Mail)
Lands Staff Officer
Appeals List No. 1
Tohawk Petroleum Corporation and M. J. M. & M. Oil Company (Regular Mail)
JHO'Donnell

87934-61

appeal to Sec 20

In reply refer to:
5.05c
Sacramento 052126

affirmed or Modified
A-29327 6-24-65
Ltr Decision

DEPT. OF INTERIOR
SACRAMENTO, CAL.

NOV 6 1 46 PM 1961

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 31, 1961

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

Certified Mail
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DECISION

William H. Johnson : Color of Title

Decision Affirmed

Mr. William H. Johnson has appealed 1/ from the Manager's decision, dated August 3, 1960, fixing the price at which the color of title applicant can purchase 40 acres of public land in the amount of $68,000.00. The appellant claims the latest Bureau appraisal of the land (considered in fixing the purchase price) is erroneous, that he was not allowed all equities to which he is entitled, and that the purchase price should be fixed at $4,000.00.

Mr. Johnson claims the appraised value of the public land must be determined on the premise that the land can only be used for the purposes for which he is occupying and using it, even though, in fact, the tract may have a greater market value because it is suitable for other potential uses.

The potential uses for lands are factors for consideration in determining the fair market value of such land. The pertinent part of the Color of Title Act, as amended (43 U.S.C., 1958 ed., 1068a), requires that the land sought shall be appraised. We must assume that Congress used the term "appraised" in its usual and accepted meaning. As expressed by the courts, "appraised" value means the best price the owner could obtain after reasonable and ample time. People ex rel. Sebring v. Dowd et al., 194 N.Y.S. 3, 4 (1922). If the land is potentially useful for homesites, the seller and the prospective buyer will certainly consider this factor in determining the price they are willing to accept and to pay for the land. Thus, the appellant's showing that he has not used the land for other than pasture purposes, does not warrant changing the appraised valuation thereof in light of the showing in the appeal record that the land is potentially useful for other purposes such as homesites. The appellant's self-serving declaration that the terrain is not suitable for homesites is not supported by the appeal record.

1/ The appellant's petition for a hearing has been previously denied by this office.

Mr. Johnson asserts that the Bureau appraisal is erroneous for the reason that the land should be appraised at its market value on November 1, 1949, the time he learned that he did not have good title to the land when it was surveyed.

The cited portion of the Color of Title Act, supra, expressly requires that the land be appraised at its value as of the date of the appraisal, exclusive of any increased value resulting from the development or improvement of the land by the applicant or his predecessors in interest. Moreover, the fact that Government employees surveyed the land in 1949, does not mean, as contended, that Government personnel previously considered the land to be privately-owned.

The appellant then contends that consideration must be given to the findings of an earlier appraisal, and that the Bureau is precluded from fixing a higher purchase price for the land than the price determined earlier based upon the erroneous appraisal.

Upon an earlier appeal to this office (see the Director's decision herein, dated April 11, 1960), the Bureau's earlier appraisal was determined to be erroneous and the case was remanded to the Land Office for reappraisal. This earlier decision, supra, was based upon the appeal record as then compiled, including the appellant's appeal asserting that this first Bureau appraisal was erroneous. The findings of the erroneous appraisal cannot be considered as evidence of the value of the land, and a properly fixed purchase price cannot be based upon an erroneous appraisal. Mordelo L. Vincent, Jr., BLM 047676, Aug. 23, 1961. Thus, the first purchase price fixed for the land, based upon the erroneous appraisal report, is entitled to no consideration, and it is no limitation as to the price finally fixed by the Bureau for the sale of the land.

Mr. Johnson has submitted a report prepared by a real estate appraiser employed by him which finds the public land to be valued at $12,000.00, or $300.00 per acre.

The appraised value per acre determined by the appellant's appraiser is less than the price per acre obtained in any of the seven sales of land described in his report, although only one of these sales is shown to have been consummated after 1959. The latest sale of land described in the submitted appraisal report shows the land therein concerned sold for the same amount per acre as the average valuation per acre set by the latest Bureau appraisal. The private appraisal report shows that the land concerned in this sale in 1960 sold for $700.00 per acre less in 1956, indicating land values are increasing in the area. The private appraiser's report does not show the purchase price reasonably obtainable by any of the sales he described if that sale were consummated on the current real estate market in that area.

The facts and conclusions shown in the private appraisal report are not sufficient to show the latest Bureau appraisal is erroneous.

The appellant then asserts that the evidence does not support the findings of the latest Bureau appraisal, in that the determination is based "upon conjecture and upon the uncorroborated opinions of individuals in the locality."

The latest Bureau appraisal report shows an examination was made of many real estate transactions in the area involving lands comparable to the public land in issue, and that adjustments were made to reflect the differences in the lands, the increased valuation evidenced in the current market in the area, deductions where the sales reflected speculative activity, and other differences shown to exist by comparison with the proposed sale in issue. The appellant has made assertion, unsupported by any factual showing, that the Bureau appraisers considered the purchase price for long term installment sales of private lands for which no adjustment was made when compared with the proposed cash sale in issue. In light of the record, the burden is upon the appellant to show by substantial, affirmative evidence that the Bureau appraisal is erroneous. Daniel Hicken, A-27877 (March 5, 1959). The appellant has not submitted evidence which would warrant changing the findings of the latest Bureau appraisal.

The appellant is correct in his assertion that the law provides that the price fixed for the sale of land under the Color of Title Act, as amended (43 U.S.C., 1958 ed., 1068 et seq.), shall not be the "appraised price" of the land in the event the applicant is entitled to allowances for equities shown to exist. See 43 CFR, 1954 ed., 140.9. However, the purchase price fixed by the decision now on appeal does reflect substantial allowances deducted from the appraised price of the land, and the appellant has not shown that he is entitled to any additional allowances for equitable factors not considered.

Since the appeal, the appellant has been permitted to examine the Bureau appraisal reports, and his supplemental statement of reasons and evidence filed thereafter have been carefully considered in rendering this decision. Thus, the appellant's protests based upon a lack of knowledge of the contents of the Bureau appraisal reports, are no longer germane to this appeal.

For the reasons stated, the Manager's decision is affirmed. Mr. Johnson is required to submit full payment of the purchase price to the Bureau's Land Office at Sacramento, California, within 30 days after this decision becomes final, or the case will be closed without further notice to him. 43 CFR, 1954 ed., 140.11. In the event the purchase price is tendered as required by this decision, the Bureau will carefully review its latest appraisal of the market value of the land and then fix a higher purchase

price in the event the value of the land at that time is determined to have increased. The appellant is not under any obligation to purchase the land.

Mr. William H. Johnson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick
Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Hon. Harold T. (Bizz) Johnson, House of Representatives
Malone, Dennis, Schottky & Pearl, Attorneys for Appellant (Certified Mail)
Mr. William H. Johnson (Regular Mail)
Mr. David C. Koester, Roseville City Manager (Regular Mail)
SD (California)
LO (Sacramento)
Chief, Div. of Appraisals
Chief, Div. of Lands and Recreation
Case File
Permanent File
Attorneys' Reading File
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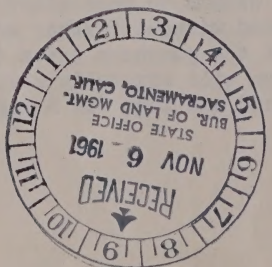

In reply refer to:
6.05c
Sacramento 055830

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

SR Noted

February 28, 1962

DECISION

DOCKET FILES

David L. Williams : Color of Title Application

Decision Vacated
Case Remanded

This is an appeal from a decision dated November 27, 1961 rejecting the above-noted Color of Title Application because the lands lie in both Tehama and Mendocino Counties and the latter county has never assessed any portion of the land but carried it on its rolls as United States land. The decision also stated that the Tehama County tax title transfer includes only portions of the land described in the application and that it would not be good administrative practice to allow title to that portion for which taxes have been paid as partial allowance would require a metes and bounds survey to determine the acreage and legal description of the allowable portion. In addition, the decision stated that the lands provide ingress and egress to National Forest land.

On appeal, the appellant states that he is willing to restrict his application to that part of the land which has been taxed and is located in Tehama County, that he is willing to give the Forest Service such right-of-way as it might need and, that if a survey will result in the granting of his application, he will have it made.

In view of the statements contained in appellant's statement of reasons, the case is remanded to the Sacramento Land Office through the Bureau's State Director for further consideration as may be appropriate.

Richard J. McCormick

Legal Assistant
Division of Appeals

DISTRIBUTION:
Mr. C. A. Stromsness, Attorney at Law (Regular Mail)
Mr. D. L. Williams (Regular Mail)
Division of Lands and Recreation
SD (California)
LO (Sacramento)
Case File
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DEPT. OF INTERIOR
SACRAMENTO, CAL.
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BUREAU OF
LAND MANAGEMENT
LAND OFFICE

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MAR 13 1962
STATE OFFICE
BUR. OF LAND MGMT.
SACRAMENTO, CALIF.

appeal to See
affirmed & modified
ltr Dec A-29741 8-12-64

DOCKET FILES

In reply refer to:
6.05c
Sacramento 054412
July 9, 1962

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Margaret E. Flanagan Administratrix, Estate of Julia A. Flanagan	:	Color of Title Application

Decision Affirmed

The above-named party has appealed from a decision dated April 11, 1962, by which the above-designated Color of Title application was allowed and established $15,000 as the appraised value of the applied for land.

On appeal the appellant contends, in essence, that (1) the price demanded of her is inequitable and unjust, (2) no consideration was given to the equities in the land, (3) no deductions were given for value of improvements or development of the property by her predecessor, (4) the appraised price is excessive since the tract comprises land that is valueless, (5) the appraised price is contrary to the theory and spirit of the color-of-title act which is for the benefit of old settlers who have occupied land in good faith for more than 20 years, in this case 72 years, and (6) the unreasonable delay of the Bureau in acting on the application, which was filed in 1957, until the value of land had gone up worked to her disadvantage.

A review of the record reveals that applicant offered 33 acres of adjacent and comparable land for sale at $600 per acre (the appraised price of the subject land is $375 per acre). The subject land is also ideally located for subdividing into rural residential areas, electric power, domestic water and roads being available for developing the area for such use.

While it is unfortunate that no action was taken on the appellant's application between 1957 when filed, and the time of decision of April 11, 1962, it appears from the record that her predecessor first learned of the defect in the title in 1939 yet made no effort to have it perfected until 1957, approximately 18 years later, when land values had become considerably higher. As to the equities of the applicant we find that the land has never been on the county tax rolls and therefore no taxes have been paid, although the appellant

and her predecessors have been in possession of the subject land for more than 70 years. Furthermore, very little of the land, no more than six acres, has been placed under cultivation, and none is presently under cultivation except for a few fruit trees and bushes. Improvements on the land such as a house, sheds etc., were not appraised since the replacement cost would be far greater than the present value. The appraised value placed on the land was arrived at on the basis of opinions of values of local real estate brokers as to the sale prices of large parcels of raw, undeveloped land, and on the basis of price received from sales of comparable raw lands in the immediate vicinity. No deduction was allowed for the original purchase price of the land which according to the records, was $850, including the buildings as most of the purchase price was for the buildings rather than the land, and no consideration was given to the buildings in appraising the land.

An examination of the appraisal reveals that it was made by qualified appraisers employed by the Bureau and that it meets all the technical and economic standards for making such appraisals. In light of the record, the burden is upon the appellant to show by substantial evidence that the price fixed for the land is erroneous. Cf. Jerry R. Crouse, A-27241 (December 23, 1955). The appellant has not submitted evidence which would warrant changing the Bureau's appraisal, nor shown that the equities of her case entitles her to additional allowances not heretofore considered.

Accordingly, the decision appealed from is affirmed.

Margaret E. Flanagan is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations.

Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Margaret E. Flanagan (Certified Mail)
SD (California) CLH
LO (Sacramento)
Division of Lands & Recreation
Division of Appraisals
Case File
Perm. File
Appeals Reading File
Attorneys' Reading File

appeal to Sec

DOCKET FILES

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DEPT. OF INTERIOR
SACRAMENTO, CAL.

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
6.05c
Sacramento 055830

October 30, 1962

Certified Mail
Return Receipt Requested

BUREAU OF
LAND MANAGEMENT
LAND OFFICE

DECISION

David L. Williams : Claim or Color of Title
: Application

Decision Affirmed

This is an appeal from a decision dated August 1, 1962, rejecting the above-noted color of title application 1/ because it would not be in the public interest to dispose of the lands described therein for the following reasons: (1) the lands constitute a key tract in providing access for administration of the Mendocino National Forest, (2) the value of the timber on the lands is in excess of $50,000, (3) the lands have excellent recreational value, and (4) the equities of the United States far outweigh the equities of the claimant in that the claimant's expenditures for tax payments do not aggregate more than $350.

The lands involved were withdrawn for national forest purposes on November 15, 1906, and were later made part of the California National Forest, now the Mendocino National Forest, and are under the jurisdiction of the Forest Service, United States Department of Agriculture.

The issuance of a patent to lands claimed under class 2 of the Claim or Color of Title Act of December 22, 1928 (45 Stat. 1069), as amended by the Act of July 28, 1953 (67 Stat. 227), is within the discretion of the Secretary of the Interior. The statute provides in pertinent part that "The Secretary of the Interior may, in his discretion, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes, . .issue a patent. . ." (Emphasis supplied).

1/ The Color of Title Act (45 Stat. 1069, as amended) and the regulations of the Department, 43 CFR 140.3 indicate that color of title claims are of two classes. A class 1 claim is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for a period of more than 20 years, and upon which valuable improvements have been placed, or some part of which has been reduced to cultivation. A class 2 claim is for a tract of public land which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for a period commencing not later than January 1, 1901, to date of the application during which time they had paid taxes levied on the land by State or local governmental units. Application Sacramento 055830 was filed as a class 2 claim.

In exercising his discretionary authority to issue patents for lands under class 2 claims, the Secretary must look into the circumstances surrounding each case and weigh all factors affecting the equities of the claimant and the public interest. From the record in the instant case it is apparent that the only equities accruing to the appellant would include the amount of $350 taxes and the purchase price of $14.41 paid to Tehama County. Whereas, granting of patent to the land claimed by the appellant would (1) seriously interfere with the plans of the Forest Service, United States Department of Agriculture, to provide access roads of their choosing to the Mendocino National Forest and impede development of the National Forest and (2) disposing of the lands, which have considerable value for recreation and containing a stand of timber with a value in excess of $50,000, would not be in the best public interest. Accordingly, the equities would dictate that the lands in question be retained in Federal ownership.

Aside from the fact that it would not be in the public interest to dispose of the land, because of the equities involved, the appellant's application could not be allowed for a different reason. The record shows that on June 26, 1894, the State of California applied to the General Land Office 2/ for an indemnity selection, No. 5050 involving the lands in question. Thereafter, on April 19, 1898, the State issued a certificate of purchase to C. R. Christian, and a patent to him on April 29, 1907. The General Land Office cancelled the State's selection of this land on September 1, 1917, and this became final on April 20, 1918, when the General Land Office notified the State that no appeal had been received to the cancellation. On May 3, 1918, the State of California notified the Tehama County Assessor that the certificate of purchase to C. R. Christian was null and void. Accordingly, in 1933 the State made restitution to Simpson Finnel and his wife, Zelior C. Finnel, the successors in interest to Mr. Christian, in the amount of $225 purchase money, and a quitclaim deed to the State was executed by the Finnels, thus removing from the record of title any conveyance which conflicted with the complete title to the lands in question held by the United States. The execution of the quitclaim deed was acknowledgment by the appellant's predecessors that they no longer had title to the lands. This quitclaim deed was recorded in the official records of Tehama County on October 11, 1933, and thereafter, on November 10, 1933, the Tehama County Recorder acknowledged cancellation of the certificate of purchase. The appellant acquired the lands by tax deed from Tehama County on October 9, 1941. The assessor of Tehama County had no right to tax the lands after final cancellation of the State's selection on April 20, 1918, in connectionwith which specific notice was given to the Assessor of Tehama County. It can only be concluded, therefore, that the officials of Tehama County, having full knowledge that title to the lands is in the United States, not only did not have the right to tax the lands, but they had no right to dispose of the lands by tax deed to the appellant, Mr. Williams, on October 9, 1941, and such a conveyance is a nullity. Cf. S. J. Hesse, Jr. A-27957 (August 3, 1959). Knowing that the lands were public lands of the United States, the appellant's predecessors could not have held the lands in good faith and adverse possession as contemplated by the Claim or Color of Title Act.

2/ Reorganization Plan No. 3, Section 403, effective July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, provided in part that "The functions of the General Land Office and of the Grazing Service in the Department of the Interior are hereby consolidated to form a new agency in the Department of the Interior to be known as the Bureau of Land Management."

Accordingly, the decision appealed from is affirmed.

Mr. Williams is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is taken, the adverse party to be served is:

Regional Forester
Forest Service
U. S. Department of Agriculture
630 Sansome Street
San Francisco, California

Richard J. McCormick
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION

Mr. C. A. Stromsness, Attorney for appellant (Certified Mail)
Mr. D. L. Williams (Regular Mail)
Mr. Edward P. Cliff, Chief, Forest Service, U. S. Department of Agriculture (Regular Mail)
Mr. M. M. Barnum, Assistant Regional Forester (Regular Mail)
SD (California)
LO (Sacramento)
RO (Redding)
Division of Lands and Recreation
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Attorneys' Reading File
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appeal to Sec affirmed A 30259 - 5-8-64

DOCKET FILES

In reply refer to:
6.05c
CC-024960 (Nevada)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 12, 1963

Certified Mail
Return Receipt Requested

DECISION

Thomas Ormachea : Color of Title Application

Decision Affirmed

Thomas Ormachea has appealed from a decision, dated March 20, 1962, rejecting his application for the purchase of certain lands because the lands sought had not been held in good faith by the claimant, or his grantors under claim or color-of-title (43 U.S.C. 1958 ed., sec. 1068) for the required period of more than 20 years.

The appellant alleges that:

1. " . . . prior to 1919 and more than thirty (30) years before filing this application, the grantors and predecessors in interest of applicant settled upon and improved the lands applied for; . . . ."

2. " . . . appellant herein took possession of said land by virtue of a grant, bargain, and sale deed from the former owners of the land dated December 6, 1938, which deed . . . conveying the interests of grantors in and to said lands . . . ."

3. " . . . applicant . . . believed, in good faith, that he was entitled to have patent issued to him after he had been informed in 1949 by respresentatives of the Bureau of Land Management that title to said lands was in the United States."

4. " . . . predecessors of claimant held the lands in question for a period of more than twenty (20) years prior to 1938 in open, peaceful, adverse possession; . . . ."

5. "In turn, for eleven (11) years, appellant held the lands in open, peaceful, adverse possession; . . . and had every reason to believe . . . that he had good title as against all the world."

6. The color or claim of title for more than 20 years is not required to commence with an instrument in writing purporting to pass title.

7. The claim of ownership or the establishment of a color of title is in the alternative; therefore the law establishes the basis for asserting a claim without proof of a document of conveyance.

The appellant's "application for Patent," filed on June 15, 1949, contains the following:

* * * * *

"That prior to the year 1919 the grantors and predecessors in interest of applicant settled upon and improved the said lands . . . and use the same for ranching and livestock purposes except when applicant was prevented from using the same by order of the United States Navy when the land was withdrawn as a bombing range and also when denied the use thereof by the Bureau of Land Management pending settlement and final determination of applicant's grazing privileges under the so-called Taylor Grazing Act of 1934. [underlining added]

That the occupation and possession of said lands have been peaceable and adverse during all of said years except as against the United States of America . . .". [underlining added]

* * * * *

That applicant's evidence of ownership from the original locators of said land . . . is shown by a copy of the original deed attached hereto . . .". [underlining added]

The document entitled "deed" purports to:

". . . grant, bargain and sell [to Thomas Ormachea] . . . all their right, title and interest in and to the following described property towit:

Possessory Claim in and to [certain described land] . . . being 100 acres more or less." [underlining added]

The case record contains a status sheet which states the following:

> "Withdrawals all above /lands/ in Graz. Dist. #3 established Nov. 3, 1936 - 1661728.
>
> As to all above, /lands/ permission granted April 13, 1944 to the Navy Dept. to use land for a gunnery range 1969232."

In the absence of any statutory basis, mere use and occupancy of the public land does not create any rights in the land against the Government. Yakutat and Southern Railway, A-26438 (September 19, 1952). Therefore, any basis for the assertion of a legal right to the public land in this case must be within the scope of the provisions of the Color-of-Title Act. Marion M. Pontius, A-27473 (November 7, 1957). Consequently, occupancy of land by a trespasser is not possession under a claim or color of title within the meaning of the Color-of-Title Act. Phyllis DeYoung Tucker, A-26984 (November 26, 1954).

The record shows that the appellant himself had not possessed the land for a period of 20 years at the time he filed his application, and thus, his claim of title must rest upon the possession of his grantors. Therefore, the pertinent question is, did the appellant's grantors hold the land in good faith and in a peaceful adverse possession under a claim or color of title for a period of time, which, when added to the period the land was possessed by the appellant in good faith under claim or color of title prior to the filing of his application equal the required 20 years or more?

The Department has held that where a grantor, "sold my rights as a peaceful adverse possessor" he conveyed no rights because there was no showing made that the grantor had a sound basis for believing that the occupation was by right. William Benton, A-23258 (January 11, 1943); Hugh Manning, A-28383 (August 18, 1960). Moreover, the passage of "possession" negates the idea that the grantor believed he had good title to the land or had any reason to believe he had a good claim to the land, Marion M. Pontius, supra.

The Department has also held that the mere going upon the land, occupying it, and placing improvements on the land cannot constitute the initiation of a claim or color of title under the Act. Wesley W. Gletty, A-25819 (May 23, 1950). The first action that could possibly initiate a color of title claim is a contract of sale. Axel Ursin, A-28310 (August 4, 1960). However, a quit claim deed does not, in and of itself, profess that the interest claimed is valid. Marion M. Pontius, supra.

The appellant admits, in his application for patent, that his occupation was not adverse against the United States. Thus, since he admits not

having a good claim of title against the United States it cannot be said that as the "possessor" he had at any time considered himself to be the owner of the land. Ainsa v. United States, 184 U.S. 639. Therefore, since the applicant and his predecessor in interest at all times knew that the title to the land was in the United States, the entire period of occupancy must be disregarded in determining whether the land has been held in good faith adverse possession within the meaning of the Color of Title Act. Edward T. Harris, Sr. A-27785 (January 19, 1959).

It is not intended by this decision to imply that the applicant and his predecessors in interest had bad faith. On the contrary, it appears from some of the wording of the application and deed, such as "original locators," "except as against the United States of America", and "possessory claim" that the applicant was under the misapprehension he could acquire public land under the public land laws in the same manner one establishes a mining claim. This is, of course, not the case.

The facts of this case indicate that there are additional reasons for rejecting the appellant's application; however, in view of the foregoing, it is not considered to be necessary to state them at this time.

Accordingly, the decision is affirmed.

Thomas Ormachea is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington 25, D. C., and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J. McCormick

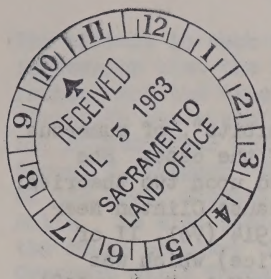
Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION
George W. Abbott, Attorney (Certified Mail)
Thomas Ormachea
Hon. Alan Bible, U. S. Senate
Hon. Walter S. Baring, House of Representatives
Division of Lands and Recreation
Appeals List No. 1
MHS

DOCKET FILES

Appeal to Sec
affirmed A-30109
11-17-64



In reply refer to:
6.05c
Sacramento 066440

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 20, 1963

Certified Mail
Return Receipt Requested

DECISION

Nora B. Kelley Howerton : Color of Title Application

Decision Affirmed

Nora B. Kelley Howerton 1/ has appealed from a decision, dated January 29, 1963, rejecting her application for a Class I color of title claim filed under the Act of December 22, 1928, as amended (43 U.S.C. 1068, 1068a) for approximately 10 acres of land described as: "A strip of land lying on the South boundary of the SW¼ of the NE¼ of sec. 24, T. 26 N., R. 9 E., M.D.M., and lying between the South line of Yale Placer Claim and the North boundary of Crescent Townsite, with house, barn and other improvements thereon, County of Plumas, State of California." The rejection was for the reasons that (1) there was reason to believe that the applicant was aware that subject land was in Federal ownership, and (2) the description in the instruments listed in the chain of title was not legally sufficient to convey any title upon which a claim or color of title could be based.

In connection with the reasons for rejection, the decision stated that the title instruments furnished by the applicant showing conveyances indicated possession of subject land was in Hoyt Clayton Neer and H. Clarence Neer 2/ during the period from 1917 through 1952. A thorough investigation of both the field and county records was made which established that two mining claims were located by the applicant's brother and by her first husband in the area of subject land. The investigation also disclosed that there was only one Yale Placer Claim in the vicinity of the land applied for which could be the one in the deed description. The south boundary of this claim and the north boundary of the Crescent Townsite are one and the same, leaving no room for the land applied for under subject color of title application.

1/ Applicant's maiden name was Neer; W(alter)L(eonard) Kelley was her first husband, and Howerton is the surname of her last husband.

2/ Brother and father respectively of the applicant.

On appeal, the appellant submits duplicate copies, "Exhibits", of numerous letters, with brief comment, relating to the history of the case. She contends that the rejection of her application was based upon two theories: (1) that she and her predecessors lacked good faith because Clinton Neer and J. S. Carter located the New Year Quartz Claim in 1914 (Vol. II of Quartz Claims at page 136, Plumas County Recorder's Office) which was described as the same ground as the Kelley Quartz Claim (Vol. 7 page 298), and (2) that the South boundary of the Yale Placer Claim and the North boundary of the Crescent Townsite are one and the same, leaving no room for subject land. She asserts in substance that the holding that the parties lacked good faith because of the possibility that a mining claim filed by a relative may have overlapped subject land is purely speculative. In this connection, the appellant submits a sketch map, "Exhibit 21", to indicate how the "Kelley (New Year)" claim would lie on the ground with respect to its boundaries, approximately $\frac{1}{4}$ mile in a 45 degree southerly direction from the Green Mountain Quartz Mill, "Exhibit 22". The appellant states "this is not an attempt to place the claim in the exact spot" /correct location/ and asserts that even by placing the Kelley Claim to the extreme right side of the red hatched triangle, "Exhibit 21", it appears unlikely that it would overlap any part of Lot 7, much less the land for which she had applied; nor would a claim the size of the Kelley (New Year) claim fit between the C. Hall and Brilliant patented claims and the West line of the Crescent Townsite.

With respect to her second contention, the appellant asserts that the "Yale Placer Claim" apparently relied upon as precluding an area for her to meet the conditions of the color of title act was not in existence when the description of the land on which she relies was formulated. The records of recorded mining claims in the Plumas County Recorder's Office reveal only one "Yale Placer Claim" in that vicinity. This claim was located by Daniel Doherty et al., on June 29, 1901, and recorded July 5, 1901 in Vol. 7 page 173. She states that she does not believe the Doherty claim was the one referred to in the description in the chain of title instruments because the deed from W. W. Hall, Administrator of the estate of F. S. Quigley 3/ (deceased) to Chille /Achilli/ Regozzio, referring therein to a Yale Placer Claim, is dated January 19, 1900. The appellant states in substance that she believes the person who formulated the description used in the deed had in mind some other "Yale Placer Claim" which was not recorded and that it and the Doherty claim which was relied upon to show no land was available are two different mining claims.

The appellant has submitted three affidavits, "Exhibits 23, 24 and 25" from individuals purporting to show that she was not aware that subject land was government property and that she has occupied it in good faith.

1/ No records were found to indicate Quigley ever owned the land described.

The affiant in each affidavit states in substance that it was always his impression that the land was owned in succession by the appellant's brother, father, and the appellant and that they have no knowledge of a "Yale Placer Claim" in the vicinity. Hoyt Clayton Neer "Exhibit 23" states that neither he, Clinton Neer nor Kelley located any mining claim on the property involved. Samuel H. Kingdon "Exhibit 24" states that he is familiar with the location of the Green Mountain Mine which is generally north of the town of Crescent Mills. He also states that the location of the so called "Yale Placer Claim", the South boundary of which is supposed to border on the North boundary of Crescent Mills Townsite has been described to him and that no mining claim or work was done in the area described, at least within 300 feet of the North boundary of said townsite.

The appellant's contentions are not supported by the record; and by her own admission she is not sure of the exact location of the Kelley (New Year) mining claim. The record shows the Yale Placer Claim of Daniel Doherty et al., recorded in Placer book Vol. 7 page 173 on July 5, 1901 is described as follows:

> "Beginning at a post marked T.S.N.W. 1, said post being one of the corners of the townsite of Crescent Mills, situated at the legal center of Section 24, T. 26 N., R. 9 E., M.D.M., thence west 10 chains to a post marked S.W. cor., thence north 20 chains to a post marked N.W. cor., thence east 20 chains to a post marked N.E. cor., thence south 20 chains to a post marked S.E. cor., thence west 10 chains to POB; comprising $E\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$ and $W\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$ of Section 24, T. 26 N., R. 9 E., M.D.M. Dated and posted on ground 6/29/01. Daniel Doherty, Patrick Daley."

The above described location is the same as shown on a map of Placer Quartz claims in Plumas County prepared by Arthur W. Keddie in 1882. This map shows that this particular Yale Placer Claim was located by the Green Mountain Company and had been "surveyed for location". The South boundary of this claim and the North boundary of the Crescent Townsite are one and the same as shown on the map, a plat of which is contained in the record.

The record further shows that the Kelley Quartz claim was recorded February 24, 1908 in Vol. 7, page 298. The description of this claim contains the statement; "this claim is situated about $\frac{1}{4}$ mile in a southerly direction from the Green Mtn. Quartz Mill." No southerly degree lines are given in the description. The location of the mill is shown on the plat of 1912. The New Year Quartz claim of Clinton Neer et al., recorded January 10, 1914 in Vol II, page 137 is described by metes and bounds and contains the statement, "This claim practically covers the same ground as was embraced in what was known as the Kelley Quartz claim." The plat of 1912 shows that a straight 90 degree line, drawn east from the Green Mountain Quartz Mill about $\frac{1}{4}$ mile, would be north of subject land, while an 80 degree line in a southerly direction from the mill for the same distance would place

the Kelley (New Year) claims on the land involved. The appellant stated in her application that she first learned she did not have clear title to the land about February 26, 1960. However, Bureau records show that her father Horatio Clarence Neer filed color of title claim, Sacramento 036278"K", December 11, 1944 for the same land, among others, which was rejected and the case closed July 1, 1949 for failure to substantiate his right of claim. The land involved in the instant case was conveyed to the appellant by her father on August 25, 1952.

In view of the foregoing, the application was properly rejected for the reasons stated in the decision. The appellant has not shown on appeal that her occupation of the land was founded on any reasonable basis for a belief that the land was held in good faith under a valid claim. Marion M. Pontius, A-27473 (November 7, 1957). The Color of Title Act requires that occupancy under color of title be in good faith in order to authorize a purchase of the land. "There can be no such thing as good faith in an adverse holding, where the party knows that he has no title, and that, under the law, which he is presumed to know, he can acquire none by occupation," Deffeback v. Hawke, 115 U.S. 392, 407 (1885); Purvis C. Vickers et al., 67 I.D. 110 (1960). In such a case, the good faith requirements of the statute is missing. Anthony S. Enos, 60 I.D. 329 (1949). Furthermore, the description given does not identify the land sought with any degree of certainty which is the first requirement under color of title claim. Burpo Attaway, BLM 041852 (Louisiana) (October 27, 1959) and cases cited therein.

Accordingly, the decision appealed from is affirmed.

Nora B. Kelley Howerton is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington 25, D. C., and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

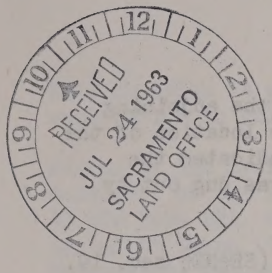
Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION
Stanley C. Young, Jr., Attorney for appellant (Certified Mail)
Nora B. Kelley Howerton
Division of Lands and Recreation
Appeals List No. 1
RLE

DOCKET FILES



In reply refer to:
6.05c
Sacramento 052995

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 12, 1963

Certified Mail
Return Receipt Requested

DECISION

Arthur E. and
Lydia LeDeit : Color of Title

Decision Affirmed

Arthur E. and Lydia LeDeit have appealed from a decision dated December 4, 1962, rejecting their application to purchase certain land under the Color of Title Act, as amended (43 U.S.C., 1958 ed., sec. 1068) for the stated reasons that the land has not been cultivated or improved as required for allowance pursuant to a class 1 claim as provided for under the Act, nor has the land been held since 1901 or earlier, a prerequisite for a class 2 claim under the Act.1/ The decision stated that none of the improvements which the appellants claim to have made on the land (including a spring improvement, a control burn, and a trail) were found during the field examination of the land, and that the showing furnished with respect to taxes paid on the land indicated such taxes were not paid for the statutory period required.

In attempting to refute the findings in the decision appealed from, the appellants stated that a qualification should be noted with respect to improvements, namely, that the general nature of surrounding lands is such that the only improvements normally made are those which relate to grazing, watering and access. The appellants referred on appeal to cleared areas and trails on the land at the time their application was filed, alleging that Mr. LeDeit and his brother brushed out trails and that chaparral covering the land was burned about 1956. They asserted it is unlikely that any brushy area devoted to grazing of cattle would show evidence of burning after the elapse of so long a time. They alleged a dirt road constructed by Mr. LeDeit and his brother was later bulldozed by tenants of theirs; that construction of two and a half miles of road was necessary to provide access to the parcel of land sought,

1/ Application Sacramento 052995 was filed as a class 1 claim, on October 16, 1956.

though the road primarily serves the larger area of the adjoining ranch. A map submitted by the appellants showing the location of the road, described it as a gravel road. The map also indicated the location of the spring which the appellants alleged was dug out by Mr. LeDeit and his brother.

The records of this office show the land applied for ($SE\frac{1}{4}NE\frac{1}{4}$ sec. 19, T. 6 S., R. 4 E., M.D.M.) to be vacant public land, unoccupied and unimproved; that it has been the subject of several field examinations pursuant to the instant application, each of which has shown no valuable improvements on or cultivation of the land as would meet the requirements of a color of title claim of class 1.

A reexamination of the land was made June 20, 1963, by a lands specialist and a land examiner of this Bureau in company with Mr. George LeDeit, representing the appellants. The examiners' report of this examination discloses that the trail they and Mr. George LeDeit traversed, ended about one-half mile east of the land applied for and that they passed through a burned-over area before reaching the land in question. This reexamination substantiated the findings of the previous examinations, that neither the spring, trail, or burned area referred to by the appellants was on the applied for land. The record indicates that the spring development was found to be on land previously owned by the LeDeits and later sold. The spring is situated in the $NE\frac{1}{4}SE\frac{1}{4}$ sec. 19. It was confirmed in this reexamination that there are no improvements on the applied for land.

It has been held that an application for patent under the Color of Title Act will be denied where the applicant fails to make a satisfactory showing that valuable improvements have been placed on the land applied for as required by the Act. Homer Wheeler Mannix et al., A-26964 (Supp.), 63 I.D. 249 (1956).

The appellants have also attempted to establish their claim or color of title through mesne conveyances since 1914 and assessment of taxes since 1905. However, the period of adverse possession by the appellants since 1951 added to that of their predecessors in the chain of title, or even dating back to the time when taxes were first assessed on the land, does not satisfy the requirement of a class 2 color of title claim inasmuch as their claim is based upon a holding of the land commencing later than January 1, 1901. Maude C. Hare, 66 I.D. 33 (1959).

It is clear from the record that the appellants have not, in their presentation on appeal, refuted the findings in the decision appealed to show that they have met the prerequisites in either of the two classes of claims recognized under the Color of Title Act, supra. Accordingly, the application having been properly rejected, the decision appealed from is affirmed.

This decision is without prejudice to the appellants filing an application to purchase the land at public sale.

Arthur E. and Lydia LeDeit are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington 25, D. C., and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellants will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION:
Mr. John Corry Fell, Attorney for Appellants (Certified Mail)
Gilmore & Gilmore
Mr. and Mrs. Arthur E. LeDeit
Hon. Wayne N. Aspinall, House of Representatives
Hon. Don Edwards, House of Representatives
Division of Lands & Recreation
Appeals List No. 1
MAG

DOCKET FILES

DEPT. OF INTERIOR
SACRAMENTO, CAL.
FEB 11 2 23 PM
BUREAU OF LAND MANAGEMENT
LAND OFFICE

In reply refer to:
6.05c
Riverside 02583

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

February 6, 1964

Certified Mail
Return Receipt Requested

DECISION

Henry P. and Jerry W. Blair : Color-of-Title Application

Decision Affirmed

Henry P. and Jerry W. Blair have appealed from a decision of the Riverside Land Office, dated September 30, 1963, rejecting their color-of-title application to purchase 160 acres of certain lands for the reason, among others, that the applicants' grantors and their predecessors in interest demonstrated by their actions that they recognized title to the land vested in the United States. These actions were stated to be as follows:

1. A close relative of the applicants' immediate predecessors in interest had filed a private exchange application in 1960 for a part of the claimed land.

2. The claimants' predecessors in interest filed an application for a grazing lease for the subject land in 1938 and the lease was later granted.

3. The claimants have been holding a grazing lease for the applied-for land since 1961, on which they are paying rent to the United States.

The appellants allege the actions of their predecessors in interest are explainable and, therefore, should not be "given the effect of a conclusive waiver of all interest in the property."

The appellants' color-of-title application, filed on February 6, 1963, states in paragraph No. 4b:

> ". . . claim to the lands is as follows: Deed to squatters rights. . . ."

And paragraph No. 6a states:

> ". . . We understood we have squatters rights when we purchased it in April 1960."

The record shows that the first purported conveyance of the land was made in 1918, by quitclaim deed. The deed contains the following language:

> ". . . All homestead and squatters rights at the foot of Providence Mountain in the Trojan Mining District . . .".

All subsequent deeds, through May 24, 1934, are quitclaim in character and they describe the nature of their conveyance and the location of the land in substantially identical language. The case file does not contain a copy of the 1938 deed to the Murphys, and Murphys' conveyance to the Blairs in 1963. These omissions, however, are not material, for the purposes of this decision.

A cadastral survey of the land in question was approved on June 12, 1945.

The Department has stated that the rule for the establishment of class 1 color-of-title claims in the following succinct language:

> "The essential element in a claim under the Color of Title Act is a showing that the land was held in good faith under claim or color of title for the required 20-year period. The purpose of the act was to provide a legal method whereby citizens, relying in good faith upon a title derived from some other source other than the Government, who had continued in adverse peaceful possession . . . might acquire title to the land. But the act was never intended to operate as a means of obtaining patent by mere occupation of public land under a pretense of title or claim where the claimant had no reason to believe he had good title. . . ." Hugh Manning, A-28383 (August 18, 1960).

In a very recent decision, the Department held, one who leased land from the State acknowledged its ownership of these lands. Therefore, the lease cannot, thereafter, be considered as holding the land in good faith, under claim or color of title. Prentiss E. Furlow, 70 I.D. 500, 505 (1963). It has also been held, that a grantor who "sold my rights as a peaceful adverse possessor" conveyed no rights because, there was no showing made that the grantors had a sound basis for believing that the occupation was by right. William Benton, A-23258 (January 11, 1943), Hugh Manning, supra. Moreover, a conveyance by quitclaim deed does not, in and of itself, profess that the interest claimed in the land is valid. Marion M. Pontius, A-27473 (November 7, 1957).

In their application, the appellants admitted their claim to the land is predicated upon an understanding that they had "squatters rights". Bouvier's Law Dictionary (Rawles Third Revision) defines a squatter as follows:

> "One who settles on the lands of others without any legal authority; this term is applied particularly to persons who settle upon public land. . . . a mere squatter . . . /has/ no rights in the land as against the government or others; . . ."

Therefore, since the appellants and their predecessors in interest have have admitted they were never more than "squatters", "there can be no such thing as good faith in an adverse holding, where the party knows that he has no title, and that, under the law, which he is presumed to know, he can acquire none by his occupation." Deffeback v. Hawke, 115 U.S. 392, 407 (1885).

Furthermore, the description of the land in the deeds, to wit: "at the foot of Providence Mountain," is much too general for the establishment of a claim, to the particular tract of land, under the Color-of-Title Act.

At this point, it is also appropriate to state that there is nothing in the case record showing that the claimants have paid State and local taxes on the land. This, in itself is evidence that the appellants knew or had reason to know they had no sound basis for believing that their occupation was based upon a valid claim. Marion M. Pontius, supra.

Accordingly, the decision is affirmed.

Henry P. and Jerry W. Blair are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellant will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Richard J. McCormick

Chief, Branch of Land Appeals
Division of Appeals

Enclosure

DISTRIBUTION
Robert K. Garst (Certified Mail)
Henry P. and Jerry W. Blair
Division of Lands and Recreation
Appeals List No. 1
MHS

DOCKET FILES

Claim or Color of Title: Generally

Where the public interest, requiring that the land applied for as a class 2 claim be retained in public ownership for public recreational purposes, far outweighs any equities that the applicants may have in the land, it is within the discretionary authority of the Secretary, and proper in such circumstances, to reject the claim or color of title application.

Martin L. and Ellen A. Fadden, Sacramento 065014 (July 24, 1964)
(Approved by Assistant Secretary Carver, September 30, 1964)

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1964 OCT 12 AM 10 00

Class or Color of Title: Generally

Where the public interest, requiring that the land applied for as a class 2 claim be retained in public ownership for public recreational purposes, far outweighs any equities that the applicants may have in the land, it is within the discretionary authority of the Secretary, and proper in such circumstances, to reject the claim or color of title application.

Martin L. and Ellen A. Fadden, Sacramento 069018 (July 21, 1961)
(Approved by Assistant Secretary Carver, September 30, 1961)

In reply refer to:
704
Sacramento 065014

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

July 24, 1964

DECISION

Martin L. and Ellen A. Fadden : Claim or Color of Title Application

Decision Affirmed

Martin L. and Ellen A. Fadden have appealed from a decision of the land office at Sacramento, California, dated April 17, 1963, rejecting their above-identified class 2 claim or color of title application, involving 40 acres of public land, under the Act of December 22, 1928, as amended (43 U.S.C. 1068). The application was rejected for the reason that the issuance of a patent under the act by the Secretary of the Interior is discretionary, and it has been determined that the highest and best use of the land is for recreational purposes.

The appellants contend on appeal, among other things, that (1) they have complied with all of the requirements of the applicable law, particularly with reference to filing a complete record claim of title commencing not later than January 1, 1901, during which time taxes levied by the State and local governmental units have been paid, (2) they and their predecessors in interest have had complete adverse possession and exclusive use and enjoyment of the land for a period beginning before January 1, 1901, and continuing to the present date, and (3) they own a 40-acre tract on the west adjacent to the subject land, and also own land adjacent thereto on the east, and the ownership of the land applied for is therefore necessary to the practical use of the ranch comprised of adjacent lands which are owned by them. The appellants have submitted with their appeal a copy of a form listing the conveyances affecting their color or claim of title to the land in question, and Bureau Form 4-1252 showing the amount of taxes levied and paid beginning with the year 1895-96 down to and including the year 1959-1960.[1/]

Section 2 of the claim or color of title act (43 U.S.C. 1068b) provides that the Secretary of the Interior may, in his discretion, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, under claim or color of title for the period commencing not later than

---

1/ The appellants' application was filed in the land office on October 25, 1960.

January 1, 1901, to the date of the application during which time they have paid taxes levied on the land by State and governmental units, issue a patent for not to exceed one hundred and sixty acres. Whether or not a patent will be issued for land held under such a class 2 claim or color of title, is a matter committed wholly to his discretion.

A review of the records discloses that the claim of title supplied by the appellants dates back to 1896 when the Central Pacific Railroad Company executed a deed transferring any and all rights they held or may receive from the United States. The appellants acquired the subject land by grant deed in 1958. At the time of purchase, the appellants secured title insurance from the Oroville Title Company which guaranteed their title to the land. There are nc structures or improvements of any type on the land. No portion of the land has been reduced to cultivation, nor is the land agricultural in character. Outside of the purchase money and taxes paid by the appellants, they have created no other equities in the land of any great significance.

An intensive field examination has been made of the land by Bureau personnel, and it has been determined that the land is highly suitable for recreational purposes in connection with the reservoir that will be created by the Oroville Dam now under construction by the State of California. The State of California has made application Sacramento 071255 to acquire the subject land, along with other public lands, under the Recreation and Public Purposes Act of June 14, 1926, supra. The land is needed by the State of California in connection with its development of a proposed recreation area adjacent to the Oroville Reservoir known as the Craig Recreation Area.

Information submitted by the State with its recreation and public purposes application indicates that there is presently, and will continue to be in the future, a tremendous demand for recreational areas within close proximity to the Oroville Reservoir, such as the proposed Craig Recreation Area. It is predicted that by the year 1970 there will be in the neighborhood of 1,100,800 visitor days annually, which will include day use and camper use of recreational areas in the Oroville Reservoir and Thermalito Forebay areas, and that by the year 2020, this visitor use will have increased to a total of 9,943,600 visitor days annually. The Craig Recreation Area is one of the several areas proposed to be developed by the State of California to provide recreational sites to take case of the many persons who will visit the Oroville Reservoir and Thermalito Forebay areas. Recent information received from the State of California is to the effect that it not only needs the subject land for its proposed development of the Craig Area, but also plans to purchase the two tracts of land owned by appellants, which adjoins the subject land on the west and east sides.

In view of the above facts, it is concluded that because of the ever increasing need for public recreational areas, and particularly in the area involved, the public interest in the land for recreational purposes far outweighs any equities that the appellants may have in the land, and the land must be retained in public ownership. It was therefore proper to reject the appellants claim or color of title application.

Accordingly, the decision appealed from is affirmed.

This decision constitutes a final administrative determination by the Department in this matter. 43 CFR 1844.1.

James F. Doyle
Chief, Office of Appeals
and Hearings

Approved: September 30, 1964

Assistant Secretary of the Interior

DISTRIBUTION:

Mr. and Mrs. Martin L. Fadden
State of California, Department of Water Resources
Hon. Harold T. (Bizz) Johnson, House of Representatives
Div. of L&M S&T (4)
Div. of L&M PM (2)
Appeals List No. 1
Staff Assistant to Assistant Secretary, PLM
Assistant Solicitor, Land Appeals
Docket & Records Section, Solicitor's Office (2)
RBO

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

In Reply Refer to:
722c
Riverside 05356 thru
05373, and 05503

April 5, 1965

DECISION

Union Feed Yards, Inc., et al : Color-of-Title
: Act of December 22, 1928
: (43 U.S.C. 1068, 1068a)
:

Applications Rejected

The applicants, listed below, each filed application under the Color of Title Act, seeking to acquire title to lands which each, or his predecessors, claim to have held, made improvements upon, and cultivated for periods of more than 20 years. The applicants describe the lands as accretions to the fractional townships 7 & 8 S., R. 23 E., SBM, California.

The fractional townships, bounded on the east by the Colorado River, passed to the State of California, pursuant to its application, under the Swampland Act. The United States no longer owns the lands nor does it claim ownership of any lands which may have accreted thereto. It has no title to any lands in the two townships which it may now convey to the applicants.

The lands under application are situated in the fractional township 3 N., R. 22 W., G&SRMer., within the State of Arizona. They were annexed by accretion to public domain uplands, and, therefore, are public domain in Federal ownership. The upland was withdrawn from all forms of appropriation and settlement, (until otherwise opened) on January 31, 1903. The effect of the withdrawal was to include any lands which subsequently accreted thereto. The withdrawal has not been revoked, nor have the lands been opened, to any form of settlement. The withdrawal bars any disposal under the subject applications.* In this regard we note that neither the applicants, nor their predecessors in interest asserted any claim, occupied or made any improvements on the lands prior to the withdrawal.

Under the circumstances outlined, favorable consideration may not be afforded and the applications are rejected.

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* 43 CFR Subparts 2311, 2214

This constitutes the final administrative decision in this matter.

Associate Director

Approved: April 5, 1965

Under
Secretary of the Interior

appeal to Sec affirmed - Remanded 5-8-67
A-30745

DOCKET FILES

Color or Claim of Title: Public Land--Adverse Possession 2214

Title to public land owned by the United States may be divested from the United States only by and through an Act of Congress, and no legal title to such land can be obtained by a person who purports to have established a right to such land by open, notorious, adverse occupancy and possession by himself and his predecessors within the purview of the laws of the State in which the land is located.

Color or Claim of Title: Generally 2214.1--1

An application for a Class 1 claim or color of title to a tract of public land is properly rejected where it is determined that the claimant, his ancestors or grantors, did not hold the land in good faith, and in peaceful, adverse possession for a period of more than 20 years.

Color or Claim of Title: Lands Subject to--Withdrawals 2214

A claim or color of title to a tract of public land cannot be initiated on land that is withdrawn and reserved for the benefit of a railroad company as part of the lands included within the primary limits of a legislative grant in aid of the construction of a railroad, as provided for by the acts of 1862 and 1864. Where, pursuant to Section 321(b) Part II, Title III of the Transportation Act of 1940, the railroad company released any unexercised right or interest it may have had in such grant lands, the lands do not become available for entry or appropriation under the public land laws, including the initiation of a claim or color of title under the color of title act, until the lands are formally restored to public domain status, and opened to such entry or appropriation by an appropriate order of the Secretary of the Interior.

Railroad Grant Lands: Generally 2224

Although a grant of public lands to a railroad company under the applicable granting acts is generally considered to be a grant in praesenti, effective upon the filing of an approved map of location of its proposed railroad, the legal, or fee simple, title to such lands remains in the United States until such time as the lands have been included in an approved selection list, and patent has issued.

Lester J. Hamel, Sacramento 078141 (September 21, 1966)

DEPT. OF INTERIOR
BUR. OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1966 OCT 6 AM 10 00

DOCKET FILES

In reply refer to:
704
Sacramento 078141

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

September 21, 1966

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Lester J. Hamel : Color of Title Application
:

Decision Affirmed

Lester J. Hamel has appealed from a decision of the Land Office at Sacramento, California, dated April 22, 1966, rejecting his above-identified application filed under the Color of Title Act of December 22, 1928, 45 Stat. 1069, as amended by the Act of July 28, 1953, 67 Stat. 227, 43 U.S.C. §§ 1068, 1068a (1964), involving Lot 9, sec. 15, T. 8 N., R. 2 E., MDM, California, containing 2.29 acres. 1/

The color of title application, which was filed as a Class 1 claim in this case, as defined in the applicable regulation, 43 CFR 2214.1-1, was rejected for the reason that the claim of title was initiated at a time when the land in question was withdrawn and reserved for the purposes of the Act of July 1, 1862, 12 Stat. 489, and the Act of July 2, 1864, 13 Stat. 356, for the benefit of the Central Pacific Railroad Company 2/, said land being within the 25 mile primary limits of the grant, and within one of the odd sections granted to the company pursuant to said acts. 3/

1/ Also rejected by the same decision were two Small Tract applications, Sacramento 058175 and 058176, and Public Sale application, Sacramento 056813, involving the same land, for the reason that the land has been classified as being more suitable for, and more in the public interest for disposal under the Recreation and Public Purposes Act of June 14, 1926, as amended, 44 Stat. 741, 43 U.S.C. §§ 869, 869:1-4 (1964). No appeals have been taken from the rejection of these applications, and the cases were closed on the records of Sacramento Land Office.

2/ The Southern Pacific Company is the successor in interest to the Central Pacific Railroad Company.

3/ An application for a Class 2 claim of title for the same land filed by Mr. Hamel under serial number Sacramento 059107, was previously rejected because the land was not described in any conveyance in the claim of title upon which he relied, commencing with a patent from the United States to Frederick Werner, dated August 5, 1868, the purported original grantor. The rejection of this application was affirmed by the Department by its decision, Lester J. Hamel, A-28830 (September 17, 1962). Mr. Hamel appealed to the Courts from this decision, but the Courts refused to review the Department's decision, holding that the issuance of patents to Class 2 claims under the color of title act is discretionary with the Secretary of the Interior, and not subject to judicial review. Hamel v. Nelson, 226 F. Supp. 96 (1963)

The decision below recites, among other things, that the appellant has submitted documents indicating that his color of title claim was initiated by a deed dated September 15, 1919, recorded January 3, 1920, in the appropriate records of Solano County, California; that the subject Lot 9, sec. 15, being within the primary limits of the Central Pacific Railroad Company grant, title thereto presumptively vested in the grantee railroad company when the road location was definitely fixed upon the filing of the map designating the general route of said road, pursuant to the provisions of the Acts of 1862 and 1864, supra, with a right to obtain a patent thereto; that this title to the land and the right to obtain patent confirming same remained so vested in the railroad company until the filing of its release of such land pursuant to Section 321(b), Part II, Title III of the Transportation Act of 1940, 54 Stat. 954, 49 U.S.C. § 65; that the released land was not subject to any form of appropriation until the land was restored to the public domain by an order of the Secretary of the Interior dated April 14, 1953, published in the Federal Register at page 2378.

The decision also recites that the appellant stated in his application that he became aware of the defect in his title to Lot 9 on April 13, 1959; because of the railroad withdrawal cited above the land was not available for the initiation of a color of title claim in 1919; and, beginning either December 28, 1940, the date the Secretary of the Interior approved the railroad company's release of the land, or the dates cited in the April 14, 1953 order restoring the lands, the appellant has not held the land adversely and in good faith for more than 20 years as required by the applicable provisions of the Color of Title Act. 4/

In his appeal the appellant contends, in substance, that the document specifically relied upon as establishing color of title in the claim in issue is a deed to his predecessor executed on September 15, 1919, and recorded January 3, 1920; and, there is no question but that this deed clearly describes Lot 9 and that there is a continuous chain of title from that deed to himself. The appellant requests statutory or judicial authority for the determination made in the decision appealed from to the effect that Lot 9 was not subject to appropriation

4/ The order, which was published in the Federal Register of April 23, 1953, at pages 2378, 2379, and 2380, restored the subject land along with a large quantity of other lands released by various railroad companies, including the Central Pacific Railroad Company, pursuant to the Transportation Act of 1940, to appropriation under the Public land laws, commencing on the 35th day after the date of the order, which was April 14, 1953, in the manner specified in the order.

under the color of title act because of its withdrawal for the purposes of the Acts of 1862 and 1864, until December 28, 1940, at which time the Secretary of the Interior approved the release of this tract by the Central Pacific Railroad Company pursuant to the Transportation Act of 1940. The appellant argues that the purpose of the color of title act was to give specific relief to the claimant thereunder, and there is no intimation that Congress intended that said act should not apply to railroad grant lands to which patent has never been requested by the railroad company nor in fact does there appear to be any legislation or judicial limitation upon the act insofar as the applicable lands subject thereto. The appellant also asserts that even assuming that the color of title act application would have been properly rejected prior to 1940 (or for that matter 1953 when this land was restored to the public domain) there is no requirement in the act that required 20 years occupancy take place entirely after that date, and that all the Bureau is saying is that he discovered his alleged problem over one year too soon after 79 years of occupancy and tax paying, and to so hold is contrary to the plain language and intent of the color of title act. The appellant also appears to be of the opinion that the fact that he became aware in 1959 that the Government claimed the land has no bearing on the matter. The appellant also asserts that while it may not be crucial in this case, it would appear that restoration of the land to the public domain for appropriation purposes, should be as of the date the release of the land by the railroad company was accepted by the Secretary, and any subsequent delays in restoring the lands may not prejudice his rights, or the rights of the general public, citing the case of Chapman v. Santa Fe Pacific Railroad Company, 198 F. 2d 498 at 501.

The appellant further contends that the color of title act requires that patent issue to him for Lot 9, and argues that while the decision appealed from indicates that the subject grantee railroad company had a "presumptively vested" title in Lot 9, the determination made by the courts in the cases of Chapman v. Santa Fe Pacific Railroad, supra, United States v. Northern Pacific Railroad Company, 256 U.S. 516, 5 L. Ed. 825, and other decisions and legislation known to the Department of the Interior, indicates that the railroad would in fact acquire all of the important indices of title to Lot 9 pursuant to the 1862 and 1864 legislation; that the foregoing decisions seem to state that the railroad acquired such a title as could be sold, and that this right was vested, and the act of issuing a patent was purely a ministerial one to be performed by the Secretary of the Interior and the rights could not be defeated by his inaction, nor could the rights be lost thereby. On the basis of the foregoing assertions, the appellant reasons that he has extinguished the Central Pacific's rights to Lot 9 through the continuous adverse possession of the lot by himself and his predecessors for the time and in the manner required by California law, he and his predecessors having been in open, notorious possession of the lot since 1870, and paid taxes thereon since at least

1888. The appellant cites West's California Codes, Civil Procedure, Sections 320 through 325, and 2 Cal. Jurisprudence, Adverse Possession, pages 496, et seq., to support this reasoning. 5/

The appellant then concludes that as between himself and the Central Pacific Railroad Company, he held title to Lot 9, and this long before 1940, and the fact that the railroad company released the land in 1940, under the philosophy ennunciated in the Chapman decision, could not deprive him of any rights in Lot 9.

It appears that the appellant is attempting by his appeal to establish his claim to Lot 9, as public land under the color of title act of December 22, 1928, and at the same time establish his claim to the land as land owned by the Central Pacific Railroad Company, under the adverse possession provisions of the laws of the State of California.

Considering the appellant's last contention first, we cannot agree that the grantee railroad company has such a right in Lot 9, as could have been extinquished by the appellant or his predecessors by open, notorious occupation and possession, under the laws of the State of California relating thereto. It is true that the Courts have repeatedly held that the Congressional grant of odd-numbered sections of land within a belt extending for a designated number of miles on either side of a railroad to be built in the future, was a grant in praesenti. However, the operation of such grants was affected by certain conditions as specified in the granting acts, including the acts of 1862 and 1864, here relevant. For instance it was the policy of Congress to exclude mineral lands from such grants, and reserve them for special disposition. In addition, the granting acts excluded from the operation thereof, any of the grant lands that had previously been granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of, prior to the time the grant became effective upon the filing of a map of definite location of the particular railroad involved. Cf. Wisconsin Central Railroad Co., v. Price County, 133 U.S. 496 (1890); Barden v. Northern Pacific Railroad Company, 154 U.S. 288 (1894); Van Wyck v. Knevak, 106 U.S. 360 (1882). Thus, it is conceded that, unless the land was mineral (and this does not appear to have been determined as to the subject land), the Central Pacific Railroad Company did acquire a certain right, or interest, in Lot 9, upon the filing of its map of definite location of its proposed railroad. In other words the grantee railroad company had such a right or interest in Lot 9, that

5/ Under the specific sections of the codes referred to by the appellant, legal title to real property, may be established by open, notorious, occupation and possession, as defined in the codes, for a period of five years, which is adverse to the true owner's rights to real estate. See West's California Codes, Civil Procedure, § § 320-325.

it undoubtedly could have maintained an action against the appellant, or his predecessors, for possession of the land, had such an action been initiated prior to the time that the company released all of its rights to Lot 9 pursuant to the Transportation Act of 1940. Cf. Deseret Salt Company v. Tarpey, 142 U.S. 241 (1891); Barden v. Northern Pacific Railroad Company, supra,

It must be pointed out, however, that while the grantee company had a right to include Lot 9 in its railroad selection list, and receive a patent thereto, provided it was found to be nonmineral prior to issuance of patent, the company did not obtain a fee simple title to the land until it had in fact had been included in an approved selection list, and patent issued. See Anderson et al., v. McKay, 211 F. 2d 798, 801 (1954); cert. denied, 348 U.S. 836 (1954), rehearing denied, 348 U.S. 890 (1954). In other words, until patent has been issued, legal title to Lot 9 remains in the United States at all times.

That legal title to such grant lands remains in the United States until issuance of patent, was recognized by Congress, when it provided specifically in the Transportation Act of 1940, that nothing therein should be construed to prevent issuance of patents confirming the title to such lands as the Secretary of the Interior should find had been theretofore sold by any such carrier to an innocent purchaser for value, or as preventing the issuance of patents to lands listed or selected by such carrier, when such listings or selection had theretofore been approved by the Secretary of the Interior. That legal title to such grant lands remained in the United States until patent issued is also confirmed by the many decisions of the Department as well as the Courts, which have held that the mineral character of such lands may be determined at any time until patent issues. See Southern Pacific Company, A-29736 et al. (May 27, 1964); Wyoming v. United States, 255 U.S. 489 (1920); Anderson v. McKay, supra. But once legal title to railroad grant land has been confirmed by issuance of patent, absent fraud, it matters not thereafter that the land may be found to be mineral in character. See Burke v. Southern Pacific R. R. Co., 234 U.S. 669, 680 (1914).

Pursuant to the provisions of the Transportation Act of 1940, the Central Pacific Railroad Company filed the required release, and the release was approved by the Secretary of the Interior on December 28, 1940. The company did not list Lot 9 as having been sold by it to an innocent purchaser for value, nor is there any record information showing that it was ever included in any selection list, either approved or unapproved by the Secretary of the Interior. Thus, any unexercised right or interest the company had in Lot 9, was extinguished by its release thereof under the Transportation Act of 1940. Atlanta and Pacific R. Co. et al., 58 I.D. 577 (1944). Upon the release of any claim that the Central Pacific Railroad Company had to Lot 9, complete title thereto reverted to the United States.

Therefore, as public land of the United States, title to Lot 9 can be divested from the United States only by and through an Act of Congress. Beaver v. United States, 350 F. 2d 4 (1965); Doran v. Central Pacific Railroad Company, 24 C. 245 (1864). In other words the appellant, or his predecessors could not now, or at any time, successfully maintain an action to acquire legal title to Lot 9 under the adverse possession provisions of the laws of the State of California.

This then leaves only the question of whether or not the appellant does in fact have a valid class 1 claim or color of title to the subject land, within the purview of the color of title act of December 22, 1928, supra, under which he has filed his subject application. We think not.

The color of title act provides in pertinent part that:

> "The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under the claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, . . . issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than $1.25 per acre: . . . ." (43 U.S.C. § 1068(1964)). (Emphasis supplied).

The language of the above-cited statute clearly indicates that it applies only to vacant, unappropriated public land. The appellant admits, and it is generally conceded that the first instrument of conveyance by which he or his predecessors could possibly have established a claim or color of title to Lot 9, was dated September 15, 1919. As explained in the decision below, Lot 9 on that date was withdrawn from all forms of appropriation under the public land laws, and reserved for the benefit of the Central Pacific Railroad Company under the railroad grants provided for by the acts of 1862 and 1864. It has been well established by the courts that where lands have been withdrawn from all forms of appropriation under the public land laws for specific purposes, such lands are not "public lands", but are in effect reservations. Federal Power Commission v. Oregon, 394 U.S. 435, 446-448 (1955). A claim initiated by location while under an order withdrawing the land from entry under the public land laws, can be the basis of no rights against the United States as the owner of the lands, but the claimant is a mere trespasser. United States v. McCutchen et al., 234 Fed. 702 (1915). The Department has also repeatedly held that lands withdrawn from all forms of appropriation, and reserved for specific purpose are not available for the initiation of any claim or color of title rights under the color of title act. Claude M. Williams et al., A-29928 (March 26, 1964); Roland W. Getchell et al., A-29147 (February 28, 1963); Axel Ursin, A-28310 (August 4, 1960); Ralph Findlay, A-23522 (February 23, 1943).

Accordingly, and notwithstanding the fact that the Central Pacific Railroad Company released all of its interests in and rights to Lot 9 to the United States, pursuant to Section 321(b), Part II, Title III of the Transportation Act of 1940, effective as of December 28, 1940, Lot 9 did not become available for entry, or appropriation under the public land laws, including the initiation of a claim or color of title under the color of title act until it was formally restored to public domain status in accordance with the specific provisions of the Secretary's order of April 14, 1953. See Floyd Hamilton, 60 I.D. 194 (1948). In the circumstances, the appellant, or his predecessors, could not possibly have initiated or held the subject land under peaceful, adverse possession for more than 20 years within the purview of the applicable portion of the color of title act.

The appellant's contention that his knowledge in April, 1959 that title to Lot 9 was in the United States has no bearing on this matter, in view of the above determination, is not considered to be particularly germane to the issues involved. Assuming, arguendo, however, that the earliest possible date that a claim of title could have been initiated for the subject land was on December 28, 1940, the effective date of the railroad company's release of the land under the Transportation Act of 1940, the fact that the appellant admitted on April 13, 1959, that he knew title to Lot 9 was in the United States, tolled the running of the period that the appellant held the land in "good faith" adverse possession. Thus the required 20-year period of good faith adverse possession would have been cut short by more than a year and one half. In this respect it has been well established that under the color of title act, any period of time during which a claimant knows, or should have known that title to the land is in the United States must be disregarded in determining whether the land has been held in good faith possession. Nora Beatrice Kelley Howerton, 71 I.D. 429 (1964); Prentiss C. Furlow, 70 I.D. 500 (1963); Ephriam R. Nelson, A-25865 (June 6, 1950). This is because the color of title act requires occupancy under claim or color of title be in good faith in order to authorize purchase thereunder. Henshaw v. Ellmaker 56 I.D. 241 (1937). There can be no such good faith in an adverse holding, where the party knows that he has no title, and that under the law, which he is presumed to know, he can acquire none by his mere occupation. Deffenback v. Hawke, 115 U.S. 392, 407 (1885); Henshaw v. Ellmaker, supra.

Accordingly, we conclude that the decision appealed from is correct and it is affirmed.

Lester J. Hamel is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with

the Director, Bureau of Land Management, Washington, D. C. 20240, and the amount of the filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is taken the appellant will have the burden of proving by presenting positive and substantial evidence wherein the decision appealed from is in error.

John B. Piccolo
Acting Chief,
Office of Appeals and Hearings

Enclosures

DISTRIBUTION:
Mr. Ronald N. Paul, Attorney for Appellant (Certified Mail)
Mr. Lester J. Hamel
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1
RBO

appeal to Sec.
affirmed A-31012 5-27-69

Color of Claim of Title: Good Faith 2214.1-1

The period of possession of public land by a grantor cannot be tacked on to that of his grantee where the grantor admits having no sound basis for believing that he had title to the land.

An application to purchase public land under the Color of Title Act is properly rejected where the applicants show that they held the land for less than 20 years.

A color of title application is properly rejected where the deed under which the tract applied for has been claimed has a description which does not define the limits of the tract with certainty.

A conveyance by quitclaim deed is not a bar to establishing a valid color of title claim.

Harold R. and Irma W. Leet, Sacramento 080068 (May 14, 1968)

1968 MAY 27 AM 10 00
DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE

Color of Claim of Title: Open Plain 32L-1.1-1

The period of possession of public land by a ~~X~~ mere cannot be tacked on to that of his grantee when the grantor admits having no ground basis for believing that he has title to the land.

An application to purchase public land under the Color of Title Act is properly rejected where the applicants show that they held the land for less than 20 years.

A color of title application is properly rejected where the deed under which the trees applied for has been claimed has a description which does not define the limits of the tract with certainty.

A conveyance by quitclaim deed is not a bar to establishing a valid color of title claim.

Harold K. and Lena V. Leet, Sacramento 060064 (May 14, 1965)

In reply refer to:
704
Sacramento 080068

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington D.C. 20240

May 14, 1968

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Harold R. and Irma W. Leet : Color of Title

:

Decision Affirmed as Modified

Harold R. and Irma W. Leet have appealed from a decision of the Sacramento Land Office, dated January 16, 1968, rejecting their application under the Color of Title Act, 45 Stat. 1069 (1928), as amended, 43 U.S.C. § 1068 (1964), to purchase as a class I claim a certain 3½ acre tract of surveyed land 1/ which they have described by a metes and bounds description. The stated reasons for the adverse action are that:

1. The applicants' immediate predecessor was aware that the subject land was public domain and this information was conveyed to the applicants.

2. The applicants' only claim is from the date of their deed, October 24, 1954, to the date of the filing of their application, November 24, 1965, and this period of time is not sufficient to satisfy the 20-year requirement of the Color of Title Act. The period of possession by the grantor cannot be tacked on to that of the grantee where the grantor had no sound basis for believing that he had title to the land, even if such holding by the grantor was for the statutory period.

The decision also held that a conveyance by quitclaim deed is not sufficient to establish a valid color of title claim, citing Appeals Office decision Arthur K. Tetrick, Oregon 015141 (October 13, 1964).

"Color of title" is that which in appearance is title, but which in reality is not. Where a person claims under a quitclaim deed, he is claiming under "color of title". Wright v. Mattison, 59 U.S. 50 (1856); Archer v. Beihl, 136 F. 113 (9th Cir., 1905). Also see 3 Am. Jur. 2nd, Adverse Possession, §§ 105, 111, 183, 185; 7A Words and Phrases, Color of Title, 337 (1952); and Black, Law Dictionary (4th ed. 1951). Therefore, the ruling by the land office that a quitclaim deed is not sufficient to establish a valid color of title claim is modified to hold that a quitclaim deed is not insufficient to establish a valid color of title claim, and the Tetrick decision, supra, is to that extent overruled.

1/ The plat of survey for section 27 and the other surrounding lands was approved on December 30, 1865.

The appellants allege as follows:

> 1. They did not learn until September 1964, that they might not have good faith title to the land.
>
> 2. The history of the possession of the land shows that it had been occupied since May 1886. Thus, there was good-faith possession for at least 20 years prior to their application.

The appellants do not deny that Clyde Mitchell, 2/ their immediate predecessor-in-interest, was aware that the subject tract is public domain. This recognition by Mitchell of the Government's superior title is considered as breaking the statute of limitations and disrupting the continuity of adverse possession under State laws recognizing the acquisition of title through adverse possession. Nora Beatrice Howerton, 71 I.D. 429, 433 (1964). Thus, since the appellants have not held the tract in good faith for the requisite 20-year period, this alone is a sufficient reason for rejecting their application. See Howerton, supra, pgs. 432 and 433.

Furthermore, the land description in the deed of conveyance from the Mitchells to the Leets is as follows:

> A certain lot situate in the said Monona Flat with a dwelling house thereon, known as the Smiley house; also all sheds, barns or outbuildings belonging to the parties of the first part; also certain lots or fields now under fence, together with furniture, tools and fixtures belonging thereto, all of said property being situate in and near the said Monona Flat.

In a somewhat similar situation, where the land sought was a 60-acre tract located in the E½SW¼ of a certain section, this Bureau held that if the instrument relied upon does not identify the land it lacks one of the first essentials for establishing a color of title claim. See Vincente E. Pena, Sr., New Mexico 028108 (April 15, 1960). In the Howerton case, supra, page 431, the Department stated that in order to give color of title to an occupancy of land, the land must be held under some deed or other instrument which describes the tract with some certainty; citing Karvonen v. Dyer, 261 F. 2d 671 (9th Cir. 1958). The Department also stated in the Howerton case, supra, that the uncertainty and the inadequacy of the land description that is apparent in the deed is relevant to the question of good faith.

2/ The case record contains the following statement signed by Clyde Mitchell:

> To whom it may concern:
> I Clyde E. Mitchell told Mr. Leet the property was government property and stemmed from Squatter's rights, and we only had a quitclaim deed.

Therefore, since the appellants did not hold the subject tract in good faith for more than 20 years under a continuous chain of title, the failure to meet the statutory requirement is a proper basis for rejecting their application.

Accordingly, the decision is affirmed as herein modified.

Harold R. and Irma W. Leet are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 1840. See enclosed Form WO 1844-1 and Circular 2137. If an appeal is taken it must be filed with the Director, Bureau of Land Management, Washington, D. C. 20240. The filing fee will be $5. In taking an appeal there must be strict compliance with the regulations. If an appeal is filed the appellants will have the burden of proving, by presenting positive and substantial evidence, wherein the decision appealed from is in error.

Newton Fisher

Chief, Office of Appeals
and Hearings

Enclosures 2

DISTRIBUTION:
H. S. Gilmore (Certified Mail)
Harold R. and Irma W. Leet
Hon. Harold T. Johnson, House of Representatives
Div. of L&M S&T (4)
Div. of L&M PM (2)
OPD
Appeals List No. 1

Sacramento 3524

JOSEPH G. SMITH
AND
ADELE D. SMITH

Approved MAR 5 1970

Color of Title: Generally

A color of title claim cannot be initiated while the land applied for is withdrawn or reserved, and the claim is not held in peaceful adverse possession when it is initiated while the land is so withdrawn or reserved.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D.C. 20240

In reply refer to:
322 (w/d)
Sacramento 3524

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

MAR 5 1970

Joseph G. Smith and
Adele D. Smith : Color of Title Application

Application Rejected

On December 15, 1969, Joseph G. Smith and Adele D. Smith filed a Class 1 color of title application under the Act of December 22, 1928, as amended, 45 Stat. 1069, 43 U.S.C. 1068, 1068a, to purchase a tract of land described by metes and bounds in sec. 1, T. 9 N., R. 4 E., Humboldt Meridian, California. The land described in the application has been found to lie within lot 18 sec. 1, its northern boundary being the fictitious Haughn northern boundary of the Hoopa Valley Indian Reservation. The applicants base their claim on Patent No. 168677, issued on January 9, 1911, to Weitchpec Frank for his homestead entry which included, inter alia, lot 6 sec. 1, above township and range and on a chain of mesne conveyances from Mr. Frank to them for a portion of the original lot 6 patented to Mr. Frank.

In 1882 John Haughn, U.S. Deputy Surveyor, surveyed the larger portion of T. 9 N., R. 4 E., including the area within which lies the Frank patented homestead land. The plat of this survey was approved on December 30, 1882, and shows the line that Mr. Haughn determined to be the northern boundary of the Hoopa Valley Indian Reservation. This line is also the south line of lot 6 sec. 1, among other lands. Departmental decision John C. Gist, et al., A. 13555 (February 15, 1930) stated that the Haughn line must be recognized as the limiting south boundary of the patented tracts bordering thereon, and that patents based on the Haughn survey did not carry title to any land south of the Haughn line.

The land at issue is south of the Haughn line and, pursuant to the Gist decision, supra, it is not a part of the patented lot 6 as is claimed by the Smiths. Their title to any portion of patented lot 6 under the chain of title emanating from Mr. Frank cannot include any land south of the Haughn line, since Mr. Frank's patent described the lands in his entry in terms of the Haughn survey and approved plat.

The true northern boundary of the Hoopa Valley Indian Reservation is the line established by Deputy Surveyor Bissell in 1875, shown on the plat of survey approved on April 17, 1876. By Executive Order of

June 23, 1876, the President declared the exterior boundaries of the Reservation to be as surveyed and reported by Bissell. Executive Order of October 16, 1891, extended the limits of the Reservation so as to include a tract one mile in width on each side of the Klamath River from the then limits of the Reservation to the Pacific Ocean. This extension begins at the true northern boundary of the Reservation and extends northwesterly to the ocean. A diagram, approved on July 1, 1931, shows these extended boundaries of the Reservation as established by the Bissell's survey, and the Executive Orders of 1876 and 1891. Lot 18 sec. 1 lies within this extension and has been a part of the Reservation since October 16, 1891.

It is well settled that a color of title claim cannot be initiated while the land applied for is withdrawn or reserved. Axel Ursin, A-28310 (August 4, 1960); Claude M. Williams, Jr., et al., A-29928 (March 25, 1961); Lester J. Hamel, 74 I.D. 125 (1967). The regulation, 43 CFR 2214.1-1(b), also states that a claim is not held in peaceful adverse possession when it is initiated while the land was withdrawn or reserved for Federal purposes.

For the reasons given above, the application by Mr. and Mrs. Smith is rejected. This decision constitutes the final administrative determination by the Department in this matter.

Boyd L. Rasmussen
Director

Approved: APR 14 1970

Harrison Loesch
Assistant Secretary of the Interior

DISTRIBUTION

Mr. Edward P. Sautter, Attorney for Appellants (Certified Mail)
Joseph G. and Adele D. Smith, Appellant (Regular Mail)
Div. of L&R (4)
Div. of Appeals and Hearings (4)

Color of Title: Good Faith 2540

Where a holder of land under color of title consummates a sale of a small portion of the tract after learning that the record did not include a patent from the United States, the sale will not operate to bar relief under the Act of December 22, 1928, if the claimant can show that he believed his title to be good at the time of the sale and that, under the circumstances, no bad faith can reasonably be inferred by his actions.

Belair Corp., ES 6869 (La.) JUN 2 2 1970

DEPT. OF INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO LAND OFFICE
1970 JUN 29 AM 10 00

In reply refer to:
141
ES 6869

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C. 20240

June 22, 1970

DECISION

Belair Corp. : Color of Title

Decision Vacated
Case Remanded

The Belair Corporation has appealed from the March 6, 1970, decision of the Manager of the New Orleans office, which rejected the corporation's application to purchase Sec. 46, T. 6 S., R. 12 E., La. Mer. as a Class I claim under the provisions of the Color of Title Act of December 22, 1928 (45 Stat. 1069) as amended. The Manager's decision was premised on a record which indicated that the applicant had conveyed a small portion of the tract to Sterling W. Gladden, Jr., after it had knowledge of the defect in its title, and that such action operated to interrupt the statutory period and to bar the transferee from acquiring title on the assumption that he knew of the defect and, therefore, he was not acting in good faith, citing Prentiss E. Furlow, 70 I.D. 500 (November 22, 1963).

The statement of the law recited in the Manager's decision is correct. However, on appeal the corporation has submitted an explanation of the matter, not previously available to the Manager, which affords a better understanding of the circumstances, motives, and intentions of the parties to the sale. Excerpts from this statement follow:

> Belair Corporation acquired this property in (1967) from Racme, Inc., who acquired it in (1930). Prior to the acquisition by Belair Corporation a title examination was conducted which revealed that the title to the property was merchantible. It was on the strength of this title examination and the legal opinion that the title was merchantible that Belair entered into the transaction.
>
> Subsequent to the purchase by Belair a purchase agreement was entered into whereby Belair agreed to sell 5.07 acres, a small portion approximating 2 acres of which was located in section 46, to Sterling W. Gladden, Jr.. At the time that this agreement was made, Belair Corporation had no

knowledge that there was a question of severance of lack of patent to section 46. After entering into this agreement with the consent of Belair Corporation, the prospective vendee commenced grading the lots and poured concrete for foundation for the erection of this building. Subsequently, the vendee had a title examination made which disclosed the question of severance. Upon this question being brought to the attention of Belair Corporation there was correspondence and telephone conversations with the Department of Interior, Land Division, Silver Springs, Maryland in an effort to obtain patent to section 46. A fee of $3.75 was paid for certain patents and the patent to section 46 was sent by the department. We attach a copy of the check and other documents. It was not discovered until the day that the sale to Gladden was to be consummated that the patent to section 46 was in another range and was not the one with which Belair was concerned. On this date the attorney for Belair by telephone contacted the Land Office in Silver Springs, Maryland and this conversation with that office led him to believe that it was only a routine ministerial matter to obtain the proper patent. The attorney for Belair was not advised and did not realize that any problems would arise if the sale between Belair and Gladden was passed. The vendee had already commenced his building and wanted to consummate the sale. That being the case and after consultation with the vendee's attorney, the sale was passed upon assurances by the attorney for Belair that the severance problem would be cleared.

The above described transaction is the only sale made by Belair and only by holding to the narrowest and most technical definition can it be said to have been made in anything other than good faith.

This account is entirely credible. It serves to evidence that appellant was unaware of the implications of the missing patent, and it negates any inference of bad faith, either directed against the United States or as between the parties to the transaction. They merely followed a course of action which seemed to them to be eminently reasonable at the time.

Appellant has also submitted a narrative abstract of the history of this tract to show that it has, in all probability, been treated and traded as private property since 1812.

Accordingly, the decision of March 6, 1970, is vacated and the case is remanded to the Manager for further adjudication and favorable action, all else being regular. As pointed out by the Manager in his decision, it will be necessary for all of the parties claiming an interest in Section 46 to join in the application, and any patent must issue in the name of all parties demonstrating an entitlement thereto or in the name of a person designated by all of them. The Manager will afford the applicant a reasonable opportunity to submit an amended application.

Edward W. Stuebing

Acting Chief, Office of Appeals
and Hearings

DISTRIBUTION

Belair Corp.
200
300 (6)
Appeals List No. 1